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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/356,771	07/16/1999	JOSEPH E. PORCELLI	1310-2	8276

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EXAMINER

MORRISON, NASCHICA SANDERS

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application N .	Applicant(s)
	09/356,771	PORCELLI, JOSEPH E.
	Examiner Naschica S Morrison	Art Unit 3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 03 September 2002 .

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 18-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 18-23 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____ .

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) Interview Summary (PTO-413) Paper No(s) _____ .

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

DETAILED ACTION

This is the fourth Office Action for serial number 09/356,771, Car and Truck Beverage Holder, filed on July 16, 1999. Claims 18-23 are pending.

Claim Objections

Claim 23 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 23 only recites subject matter previously recited in claim 21.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,938,160 to Hartmann et al. (Hartmann) in view of U.S. Patent Des. 355,336 to Dickey et al. (Dickey), and further in view of U.S. Patent 5,628,441 to Dykstra. Regarding claims 18 and 20, Hartmann discloses a plastic beverage container holder comprising: a basket (14) having two side walls (in Fig. 3, defined as the left and right portions of 10 when split into equal halves) each having a top edge (at 15 - Fig. 1)

collectively defining a top end opening, the two side walls disposed opposite one another and each having at least two openings (the openings are separated by member 14 shown in Fig. 1) therethrough disposed beneath the top edge border, four resilient fingers (16) coupled to the basket and depending from one of the top edge borders such that they each extend downwardly and inwardly into a different one of the side wall openings, and a generally U-shaped hook (18) attached to and extending above the basket. Hartmann does not disclose the basket and opening being rectangular. Dickey discloses a container holder (Fig. 1) comprising a rectangular basket defining a rectangular opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the basket to be rectangular in shape (wherein it includes the at least two oppositely disposed side walls each having the two openings and corresponding resilient fingers) because one would have been motivated to provide a beverage container holder for rectangular beverage containers as taught by Dickey (Claim, lines 1-2). Hartmann in view of Dickey also fails to disclose the fingers having a V-shaped profile. Dykstra discloses a beverage container holder (Fig. 1) including a plurality of retaining members (46, 48) having a V-shaped profile when viewed in a vertical plane with the point of the V extending towards a central opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the resilient fingers to have a V-shaped profile because one would have been motivated to provide a means for securely holding the container as taught by Dykstra (col. 2, lines 64 ff.). Regarding claim 19, Hartmann in view of Dickey and further in view of Dykstra does not disclose the holder being a single unitary

member. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the holder to be unitary because one would have been motivated to reduce assembly time and manufacturing costs. Furthermore, one-piece construction, in place of separate elements fastened together, is a design consideration within the level of ordinary skill of the art.

Claims 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,928,865 to Lorence et al. (Lorence) in view of Dickey in view of U.S. Patent 5,297,767 to Miller et al. (Miller) and further in view of Dykstra. Regarding claims 21 and 23, Lorence discloses a beverage container holder comprising: a rectangular tray (62) including two openings (68) each having a top edge border and a supporting member (70) rotatably coupled to the tray and pivotable into a position located below the openings (Fig. 1). Lorence does not teach the openings being rectangular. Dickey discloses a beverage container holder including a rectangular opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the openings to be rectangular in shape because one would have been motivated to provide a holder for rectangular beverage containers as taught by Dickey (Claim, lines 1-2). Lorence in view of Dickey also fails to disclose a plurality of resilient fingers extending inwardly within the openings. Miller discloses a beverage container holder (Fig. 2) comprising two openings (31,41) and two sets of four resilient fingers (35, 45) depending from the top wall and each extending within an opening (31, 41). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified each of the openings by including at least four resilient fingers therein

because one would have been motivated to provide a means for snugly holding a container to the holder as taught by Miller (col. 2, lines 23-30). Lorence in view of Dickey in view of Miller teaches the holder as applied above, but does not disclose the fingers being V-shaped. Dykstra discloses a beverage container holder (Fig. 1) including a plurality of retaining members (46, 48) having a V-shaped profile when viewed in a vertical plane with the point of the V extending towards a central opening. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the resilient fingers to have a V-shaped profile as an alternative design for securely holding a container as taught by Dykstra (col. 2, lines 64 ff.).

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lorence in view of Dickey in view of Miller in view of Dykstra, and further in view of U.S. Patent 4,530,480 to Pratt. Regarding claim 22, Lorence in view of Dickey in view of Miller in view of Dykstra discloses the beverage container holder as applied above, but does not disclose the supporting member (70) being spring biased into the position located below the opening. Pratt discloses a container holder (Fig. 2) having a spring means (60) for biasing a support member (44) into a lowered position. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the holder by including a spring means because one would have been motivated to permit removal of the beverage container and positioning of the support member for collapse for storage as taught by Pratt (col. 5, lines 2-11).

Response to Arguments

Applicant's arguments with respect to claims 18-23 have been considered but are moot in view of the new grounds of rejection.

Applicant's arguments filed 9/3/02 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, each of the combinations set forth above relies on the teachings and motivations of the references themselves as specifically set forth and also in the knowledge generally available to one of ordinary skill in the art as specifically set forth above (see rejections).

In response to applicant's argument that the examiner's conclusion of obviousness (of the unitary construction) is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account *only knowledge which was within the level of ordinary skill at the time the claimed invention was made*, and does not include knowledge gleaned only from the applicant's

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disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

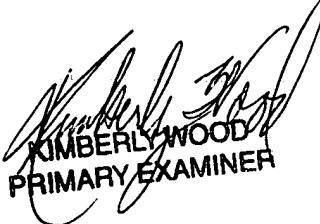
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9326 (formal amendments) or (703) 872-9327 (After Final amendments).

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.


Naschica S. Morrison
Patent Examiner
Art Unit 3632
11/18/02


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PRIMARY EXAMINER